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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 OCEANSIDE ORGANICS;
12 OCEANSIDE FARM TO TABLE, INC.;
13 ALAN SHELTON; JUSTINE SHELTON;
14 RON MIROLLA; LISA RIGG;
15 MICHAEL WINKLEMAN; SARAH
16 DYAL; ANTHONY CARBONNE;
17 RICHARD DAVIS; DAVID SNYDER;
18 DUANE LEWIS; SANDRA LEWIS;
19 WAYNE LARSON; SHAWN SMITH;
20 KYLE SNELLER; BUCK
21 HUTCHERSON; LOGAN PIERCE;
22 BROOK BISHOP; RON BOCIAN,

23 Plaintiffs,

24 v.

25 COUNTY OF SAN DIEGO, SAN
26 DIEGO COUNTY SHERIFF'S
27 DEPARTMENT; WILLIAM GORE; TIM
28 CLARK; MATT STEVENS; and DOES
1-10 inclusive,

Defendants.

Case No.: 15-CV-854 JLS (MDD)

**ORDER: (1) GRANTING
DEFENDANTS' MOTION TO
DISMISS PLAINTIFFS' THIRD
AMENDED COMPLAINT; AND
(2) DISMISSING WITHOUT
PREJUDICE PLAINTIFFS' THIRD
AMENDED COMPLAINT**

(ECF No. 40)

Presently before the Court is Defendants' Motion to Dismiss Plaintiffs' Third Amended Complaint. ("MTD," ECF No. 40.) Also before the Court is Plaintiffs'

1 Response in Opposition to, (“Opp’n,” ECF No. 42), and Defendants’ Reply in Support of,
2 (“Reply,” ECF No. 43), the Motion to Dismiss. Having considered the parties’ arguments
3 and the law, the Court **GRANTS** Defendants’ Motion to Dismiss and **DISMISSES**
4 **WITHOUT PREJUDICE** Plaintiffs’ Third Amended Complaint.

5 **BACKGROUND**

6 Plaintiff Oceanside Organics is a “closed loop marijuana collective” operating in
7 San Diego County, California. (Third Am. Compl. (“TAC”), ECF No. 40, ¶ 19.) The other
8 plaintiffs are Oceanside Organics’ eighteen individual members and a corporation formed
9 to purchase the property upon which Oceanside Organics grows its medical marijuana. (*Id.*
10 ¶¶ 3–18, 20.)

11 Plaintiffs agreed to contact local law enforcement to ensure the legality and
12 compliance of their collective. (*Id.* ¶ 28.) In mid-July 2014, Plaintiffs’ counsel contacted
13 Defendant Tim Clark, a Deputy Sheriff with the San Diego County Sheriff’s Department.
14 (*Id.* ¶¶ 22, 29.) In the course of their correspondence, Plaintiffs’ counsel provided to
15 Defendant Clark “copies of all valid recommendations” for medical marijuana. (*Id.* ¶ 30.)
16 Plaintiffs also “acquired state medical marijuana cards as requested by [D]eputy Clark.”
17 (*Id.*) According to Plaintiffs’ counsel, “Deputy Clark repeatedly indicated to [Plaintiffs’
18 counsel] that no legal action would be taken against the collective operation and that
19 nobody at the cultivation site would be subject to arrest.” (*Id.*) Defendant Clark “thanked
20 attorney Callaway for the transparency and stated that the collective members were
21 ‘golden’ and the cultivation operation was operating legally.” (*Id.*)

22 Nevertheless, Plaintiffs allege “Deputy Clark conspired with [D]eputy Stevens[,
23 another Deputy Sheriff with the San Diego County Sheriff’s Department,] to have an illegal
24 search warrant issued[,] which was based on a knowingly false affidavit.” (*Id.* ¶¶ 23, 31.)
25 Specifically, Defendants “falsely sw[ore] under oath that the marijuana was being
26 cultivated illegally, despite the knowledge of both [Defendants] that the marijuana was
27 being cultivated legally.” (*Id.* ¶ 31.) On September 12, 2014, Plaintiffs’ property was
28 raided, (*id.* ¶¶ 29, 32), and Plaintiffs Shawn Smith and Kyle Sneller were arrested by

1 Defendants Clark and Stevens “without probable cause,” (*id.* ¶¶ 14, 15, 29, 32, 50, 55).
2 “At the time of the raid . . . , there were over 20 valid members of the collective and 31
3 medical marijuana plants on site.” (*Id.* ¶ 32.)

4 As a result of Defendants’ actions, Plaintiffs “suffered loss of illegally confiscated
5 medical marijuana, intentional infliction of emotional distress, negligent infliction of
6 emotional distress, false arrest, [and] violation of civil rights under the Constitution of the
7 United . . . States and the State of California.” (*Id.* ¶ 33.) Plaintiffs allege the County of
8 San Diego is also liable because, amongst other reasons, it

9 maintain[ed] a custom, policy and practice of violating the legal
10 rights of valid medical marijuana patients in San Diego County
11 by failing to properly train and supervise deputies . . . [and]
12 allowed [the Sheriff’s Department] to violate the guidelines of
13 the Attorney General for the State of California regarding the
security and non-diversion of marijuana grown for medical use
in the State of California.

14 (*Id.* ¶ 25.) “As a proximate result of the custom, policy and practice of the County of San
15 Diego an illegal warrant was issued, [and the] illegal raid . . . t[ook] place” (*Id.* ¶ 39.)

16 On April 17, 2015, Plaintiffs filed their original Complaint, setting forth six causes
17 of action against Defendants Stevens and Clark or “all Individual Defendants” under both
18 42 U.S.C. § 1983 and California law. (*See* ECF No. 1 ¶¶ 40–64.) Plaintiffs also alleged a
19 separate cause of action under section 1983 against Defendants County of San Diego and
20 the San Diego County Sheriff’s Department. (*See id.* ¶¶ 35–39.) The complaint also named
21 Sheriff William Gore as a defendant, alleging only that he “is the chief policymaker and
22 decision maker for the San Diego County Sheriff’s Department on all issues regarding
23 proper police training.” (*Id.* ¶ 21.)

24 Defendants filed their first motion to dismiss on June 22, 2015, (ECF No. 5), and
25 Plaintiffs filed their Request for Preliminary Injunction on June 25, 2015, (ECF No. 7). On
26 November 30, 2015, the Court granted the County Defendants’ motion to dsimiss and
27 denied Plaintiffs’ request for preliminary injunction. (ECF No. 22.) Plaintiffs have filed
28 First and Second Amended Complaint (ECF Nos. 23, 32), both of which have been

1 dismissed in their entirety pursuant to Defendants’ corresponding motions to dismiss.
2 (ECF Nos. 31, 39.) Plaintiffs filed their Third Amended Complaint on May 1, 2017 and
3 Defendants filed the instant Motion to Dismiss on May 15, 2017.

4 **LEGAL STANDARD**

5 Federal Rule of Civil Procedure 12(b)(6) permits a party to raise by motion the
6 defense that the complaint “fail[s] to state a claim upon which relief can be granted,”
7 generally referred to as a motion to dismiss. The Court evaluates whether a complaint
8 states a cognizable legal theory and sufficient facts in light of Federal Rule of Civil
9 Procedure 8(a), which requires a “short and plain statement of the claim showing that the
10 pleader is entitled to relief.” Although Rule 8 “does not require ‘detailed factual
11 allegations,’ . . . it [does] demand more than an unadorned, the-defendant-unlawfully-
12 harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl.*
13 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In other words, “a plaintiff’s obligation to
14 provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and
15 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”
16 *Twombly*, 550 U.S. at 555 (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). A
17 complaint will not suffice “if it tenders ‘naked assertion[s]’ devoid of ‘further factual
18 enhancement.’” *Iqbal*, 556 U.S. at 677 (citing *Twombly*, 550 U.S. at 557).

19 In order to survive a motion to dismiss, “a complaint must contain sufficient factual
20 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* (quoting
21 *Twombly*, 550 U.S. at 570); *see also* Fed. R. Civ. P. 12(b)(6). A claim is facially plausible
22 when the facts pled “allow the court to draw the reasonable inference that the defendant is
23 liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 677 (citing *Twombly*, 550 U.S. at
24 556). That is not to say that the claim must be probable, but there must be “more than a
25 sheer possibility that a defendant has acted unlawfully.” *Id.* Facts “‘merely consistent
26 with’ a defendant’s liability” fall short of a plausible entitlement to relief. *Id.* (quoting
27 *Twombly*, 550 U.S. at 557). Further, the Court need not accept as true “legal conclusions”
28 contained in the complaint. *Id.* This review requires context-specific analysis involving

1 the Court’s “judicial experience and common sense.” *Id.* at 678 (citation omitted).
2 “[W]here the well-pleaded facts do not permit the court to infer more than the mere
3 possibility of misconduct, the complaint has alleged—but it has not ‘show[n]’—‘that the
4 pleader is entitled to relief.’” *Id.*

5 Where a complaint does not survive 12(b)(6) analysis, the Court will grant leave to
6 amend unless it determines that no modified contention “consistent with the challenged
7 pleading . . . [will] cure the deficiency.” *DeSoto v. Yellow Freight Sys., Inc.*, 957 F.2d 655,
8 658 (9th Cir. 1992) (quoting *Schriber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d
9 1393, 1401 (9th Cir. 1986)).

10 ANALYSIS

11 **I. First Cause of Action: Violation of Civil Rights (Section 1983) Against County** 12 **Defendants (*Monell* Theory of Liability)**

13 Plaintiffs’ first cause of action claims violation of civil rights under section 1983
14 against Defendants County of San Diego and San Diego County Sheriff’s Department,
15 (collectively, the “County Defendants”). A government entity may not be held liable under
16 section 1983 unless a policy, practice, or custom of the entity can be shown to be a moving
17 force behind a violation of constitutional rights. *Monell v. Dep’t of Soc. Servs. of the City*
18 *of N.Y.*, 436 U.S. 658, 694 (1978). To establish liability for governmental entities under
19 *Monell*, a “plaintiff must show: (1) that [the plaintiff] possessed a constitutional right of
20 which he was deprived; (2) that the municipality had a policy; (3) that this policy amounts
21 to deliberate indifference to the plaintiff’s constitutional right; and, (4) that the policy is
22 the moving force behind the constitutional violation.” *Plumeau v. Sch. Dist. No. 40 Cnty.*
23 *of Yamhill*, 130 F.3d 432, 438 (9th Cir. 1997) (alterations in original) (internal quotation
24 marks omitted) (quoting *Oviatt ex rel. Waugh v. Pearce*, 954 F.2d 1470, 1474 (9th Cir.
25 1992)).

26 [T]here are three ways to show a policy or custom of a
27 municipality: (1) by showing “a longstanding practice or custom
28 which constitutes the standard operating procedure of the local
government entity”; (2) “by showing that the decision-making

1 official was, as a matter of state law, a final policymaking
2 authority whose edicts or acts may fairly be said to represent
3 official policy in the area of decision”; or (3) “by showing that
4 an official with final policymaking authority either delegated that
authority to, or ratified the decision of, a subordinate.”

5 *Villegas v. Gilroy Garlic Festival Ass’n*, 541 F.3d 950, 964 (9th Cir. 2008) (quoting *Ulrich*
6 *v. City of San Francisco*, 308 F.3d 968, 984–85 (9th Cir. 2002)). “A plaintiff cannot prove
7 the existence of a municipal policy or custom based solely on the occurrence of a single
8 incident of unconstitutional action by a non-policymaking employee.” *Davis v. City of*
9 *Ellensburg*, 869 F.2d 1230, 1233 (9th Cir. 1989) (emphasis removed) (citing *City of*
10 *Oklahoma City v. Tuttle*, 471 U.S. 808, 823–24 (1985) (plurality opinion)). “Previously,
11 the Ninth Circuit held that a *Monell* claim was sufficient to withstand a motion to dismiss
12 even if the claim was based on ‘nothing more than a bare allegation that the individual
13 officers’ conduct conformed to official policy, custom, or practice.” *Warner v. Cnty. of*
14 *San Diego*, No. 10CV1057 BTM BLM, 2011 WL 662993, at *3 (S.D. Cal. Feb. 14, 2011)
15 (quoting *Karim-Panahi v. L.A. Police Dep’t*, 839 F.2d 621, 624 (9th Cir. 1988)). However,
16 “since then, *Twombly* and *Iqbal* have made it clear that conclusory allegations that merely
17 recite the elements of a claim are insufficient for 12(b)(6) purposes.” *Id.*

18 Defendants move to dismiss the Third Amended Complaint because Plaintiffs fail
19 to show an underlying constitutional deprivation and do not state any plausible *Monell*
20 claim under any of the three ways to establish a policy or custom. (MTD 15–16.)¹
21 Plaintiffs argue that they have established the underlying constitutional deprivation and
22 that they are “protected under the Fourth Amendment from illegal arrest and illegal seizure
23 [sic] of property and from the custom, policy[,] and practice of a governmental entity that
24 allows illegal police conduct.” (Opp’n 5.) Plaintiffs again allege that *Monell* liability may
25 be imposed for a failure to properly train and supervise deputies. (TAC ¶ 37.)
26

27
28 ¹ Pin citations to docketed material refer to the CM/ECF numbers electronically stamped at the top of each page.

1 In particular, Plaintiffs allege that

2 the County of San Diego, through the actions of the Board of
3 Supervisors, the District Attorney's Office and the Sheriff's
4 Department[,] maintain[s] a custom, policy and practice of
5 violating the legal rights of valid medical marijuana patients in
6 San Diego County by failing to properly train and supervise
7 deputies regarding the obligation of the deputies to follow the
8 statutory scheme created by the citizens of the State of California
9 to allow cultivation of marijuana in California for medical use,
by creating and allowing an environment in which deputies are
encouraged and allowed to violate[] their oath to uphold the laws
of the State of California and the Constitution of the United
States.

10
11 (*Id.*) Plaintiffs add that Defendant "GORE is the chief policymaker and decision maker
12 for the San Diego County Sheriff's Department on all issues regarding proper police
13 training for the San Diego County Sheriff's Department." (*Id.* ¶ 21.) Plaintiffs allege
14 "Defendant Clark admitted to attorney Callaway that it is the position of the San Diego
15 Sheriff's Department that no cultivation of marijuana is legal in San Diego County." (*Id.*
16 ¶ 30.)

17 There are three possible ways to demonstrate that the County of San Diego had a
18 policy or custom. *See Villegas*, 541 F.3d at 964. The Court finds that at least some of
19 Plaintiffs' allegations are non-conclusory, and thus sufficient at this stage to plausibly
20 suggest the existence of a municipal custom. Specifically, Plaintiffs allege that the County
21 of San Diego (1) fails "to properly train and supervise deputies regarding the obligation of
22 the deputies to follow the statutory scheme created by the citizens of the State of California
23 to allow cultivation of marijuana in California for medical use"; and (2) "creat[es] and
24 allow[s] an environment in which deputies are encouraged and allowed to violate the
25 guidelines of the Attorney General for the State of California regarding the security and
26 non-diversion of marijuana grown for medical use in the State of California." Additionally,
27 Plaintiffs add an allegation that Defendant Clark admitted that the Sheriff's Department
28 had a policy that cultivation of marijuana is illegal in San Diego County. These allegations,

1 taken as true, are sufficient to give the County Defendants fair notice of the allegedly
2 unlawful policies and practices in place. *See, e.g., Johnson v. Shasta Cnty.*, 83 F. Supp. 3d
3 918, 931 (E.D. Cal. 2015) (finding similar allegations sufficient at the pleading stage).

4 Despite the above finding, Plaintiffs fail to adequately plead an underlying
5 constitutional violation, *see infra* section III.A. The underlying constitutional deprivation
6 is a necessary element of a *Monell* claim. *See Plumeau*, 130 F.3d at 438. Thus, Plaintiffs'
7 *Monell* liability must also fail. Thus, the Court **GRANTS IN PART** Defendants' Motion
8 to Dismiss and **DISMISSES WITHOUT PREJUDICE** Plaintiffs' first cause of action.

9 **II. Second Cause of Action: Conspiracy to Violate Civil Rights (Section 1983)**
10 **Against All Individual Defendants**

11 With respect to their second cause of action for conspiracy to violate civil rights,
12 Plaintiffs allege that "all individual named defendants herein acted in concert and conspired
13 to intentionally have plaintiffs subjected to false arrest, illegal police conduct and illegal
14 and false confiscation of legally grown medical marijuana." (TAC ¶ 41.) Plaintiffs further
15 allege that "the conduct of all individual defendants herein was motivated by evil motive
16 and intent" (*id.* ¶ 43), and that "all individual defendants named herein exhibited reckless
17 and callous indifference to the plaintiffs['] rights under the Fourth and Fourteenth
18 Amendments to the U.S. Constitution and the Constitution of the State of California," (*id.*
19 ¶ 44).

20 The Ninth Circuit has summarized the elements of a civil conspiracy tort claim as
21 follows:

22 "A civil conspiracy is a combination of two or more persons who,
23 by some concerted action, intend to accomplish some unlawful
24 objective for the purpose of harming another which results in
25 damage." To prove a civil conspiracy, the plaintiff must show
26 that the conspiring parties "reached a unity of purpose or a
27 common design and understanding, or a meeting of the minds in
28 an unlawful arrangement." "To be liable, each participant in the
conspiracy need not know the exact details of the plan, but each
participant must at least share the common objective of the
conspiracy." A defendant's knowledge of and participation in a

1 conspiracy may be inferred from circumstantial evidence and
2 from evidence of the defendant's actions. . . . As with [plaintiff's]
3 other claims, his allegations of conspiracy must satisfy *Iqbal*.

4 *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 935 (9th Cir. 2012) (quoting *Gilbrook v. City of*
5 *Westminster*, 177 F.3d 839, 856–57 (9th Cir. 1999)). Further, “[c]onspiracy is not itself a
6 constitutional tort under § 1983. . . . It does not enlarge the nature of the claims asserted by
7 the plaintiff, as there must always be an underlying constitutional violation.” *Id.* (citing
8 *Cassettari v. Nev. Cnty.*, 824 F.2d 735, 739 (9th Cir. 1987) (“The insufficiency of these
9 allegations to support a section 1983 violation precludes a conspiracy claim predicated
10 upon the same allegations.”)).

11 Defendants argue that Plaintiffs’ conspiracy claim fails for two reasons: first, they
12 fail to allege an underlying constitutional violation and second, they do not allege any facts
13 showing that Defendants entered into “an agreement or ‘meeting of the minds’ to violate
14 constitutional rights.” (MTD 11–12 (quoting *United Steelworkers of Am. v. Phelps Dodge*
15 *Corp.*, 865 F.2d 1539, 1540–41 (9th Cir. 1989)).) In opposition, Plaintiffs argue that the
16 underlying constitutional deprivation is cognizable and that Defendant Clark “conspired
17 with defendant Stevens to lie to the magistrate that criminal activity was taking place.”
18 (Opp’n 5.)

19 The Court agrees with both of Defendants’ arguments. First, the Court finds that
20 because Plaintiffs’ do not adequately plead an underlying constitutional violation,
21 Plaintiffs’ conspiracy claim must also fail. *See infra* section III.A.

22 Second, Plaintiffs’ Third Amended Complaint alleges several factual allegations
23 regarding Defendant Clark. For example, Defendant Clark was in contact with Plaintiffs’
24 counsel about Plaintiffs’ recommendations, Defendant Clark advised Plaintiffs he would
25 meet with them, Defendant Clark visited the collective twice, and it was Defendant Clark
26 who told Plaintiffs they were “golden.” (TAC ¶¶ 29–30.) Conspicuously absent from these
27 factual allegations is any detail concerning Defendant Stevens’ actions or any other
28 individual defendant. Instead, Plaintiffs allege, for example, “Deputy Clark conspired with

1 deputy Stevens to have an illegal search warrant issued,” and [b]oth deputies Clark and
2 Stevens knew that the collective cultivation operation was operating legally within the laws
3 of the state of California.” (*Id.* ¶ 31.) These allegations are “legal conclusions” that the
4 Court need not credit. *Iqbal*, 556 U.S. at 677. These allegations simply rephrase the
5 elements of a civil conspiracy claim, e.g., the Deputies conspired together and they had
6 common knowledge. Such conclusory allegations “do not state a claim that is plausible on
7 its face,” *id.*, for civil conspiracy, regardless of whether there is an underlying
8 constitutional violation. There are no factual allegations tying Defendant Stevens to
9 Defendant Clark’s conduct.

10 Consequently, the Court **GRANTS IN PART** Defendants’ Motion to Dismiss and
11 **DISMISSES WITHOUT PREJUDICE** Plaintiffs’ second cause of action.

12 **III. Third Cause of Action: Violation of Civil Rights (Section 1983) Against**
13 **Defendants Clark and Stevens**

14 In their third cause of action, Plaintiffs allege that

15 Defendants maliciously and without probable cause caused an
16 illegal search warrant affidavit to be sworn against plaintiffs,
17 executed the illegal warrant issued upon said false affidavit and
18 illegally confiscated and converted plaintiffs’ legally grown
19 medical marijuana upon false evidence to be issued for plaintiffs
20 in violation of plaintiffs’ rights to due process under the Fourth
21 and Fourteenth Amendments of the Constitution of the United
22 States and the Constitution of the State of California.

22 (TAC ¶ 46.) Plaintiffs argue that they have properly stated a claim for judicial deception,
23 which would form the basis for the underlying constitutional deprivation. (*See* Opp’n 6.)

24 To establish liability under section 1983, Plaintiffs must show (1) that they were
25 deprived of a right secured by the United States Constitution or a federal law and (2) that
26 the deprivation was effected “under color of state law.” *Broam v. Bogan*, 320 F.3d 1023,
27 1028 (9th Cir. 2003) (quoting *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 155 (1978))
28 (internal quotation marks omitted). The Court examines each element in turn.

1 ***A. Underlying Constitutional Violation***

2 Plaintiffs argue the underlying constitutional deprivation they suffered is based on
3 their right to be free from illegal police conduct and illegal seizure of legally owned
4 property under the Fourteenth, Fourth, and Fifth Amendments.² (Opp’n 5.)

5 This Court previously found that Plaintiffs do not have either a procedural or
6 substantive due process right under the Fourteenth Amendment. (*See, e.g.*, ECF No. 22, at
7 13–14 (“Plaintiff[s] lack[] a federal Constitutional right to possess marijuana for medical
8 purposes.”).) Plaintiffs do not provide any argument that would overcome the Court’s
9 previous holding—indeed, this holding is widely accepted amongst the district courts that
10 have considered the argument. (*See id.* at 14 (collecting authority).) Therefore, the Court
11 finds that Plaintiffs fail to state a claim for a due process right under the Fourteenth
12 Amendment.

13 The Court turns to Plaintiffs’ Fourth Amendment claims. Plaintiffs allege there was
14 a warrant, but contend that it was “an illegal search warrant issued which was based upon
15 a knowingly false affidavit in support of the warrant.” (TAC ¶ 31.) Thus, Plaintiffs argue
16 the underlying constitutional violation is judicial deception. (Opp’n 6.)

17 The Fourth Amendment prohibits unreasonable searches and seizures. U.S. Const.
18 amend. IV. Furthermore, “[t]he Fourth Amendment prohibits a search conducted pursuant
19 to ‘an ill-begotten or otherwise invalid warrant.’” *Little v. Gore*, 148 F. Supp. 3d 936, 946
20 (S.D. Cal. 2015) (quoting *Bravo v. City of Santa Maria*, 665 F.3d 1076, 1083 (9th Cir.
21 2011)). To state a claim for judicial deception under section 1983, a plaintiff must “(1)
22 establish that the warrant affidavit contained misrepresentations or omissions material to
23 the finding of probable cause, and (2) make a ‘substantial showing’ that the
24

25 ² Additionally, Plaintiffs raise the Fifth Amendment as a potential basis for a constitutional violation in
26 their Opposition, but have not included it in their Third Amended Complaint. Therefore, the Court will
27 not consider any possible Fifth Amendment issue. *See Schneider v. Cal. Dep’t of Corr.*, 151 F.3d 1194,
28 1197 n.1 (9th Cir. 1998) (“In determining the propriety of a Rule 12(b)(6) dismissal, a court *may not* look
beyond the complaint to a plaintiff’s moving papers, such as a memorandum in opposition to a defendant’s
motion to dismiss.”).

1 misrepresentations or omissions were made intentionally or with reckless disregard for the
2 truth.” *Id.* (quoting *Bravo*, 665 F.3d at 1083). To prevail on the materiality element,
3 Plaintiffs must show that a search warrant would not have issued had the affidavit
4 contained the truthful or omitted information. *See Lombardi v. City of El Cajon*, 117 F.3d
5 1117, 1126 (9th Cir. 1997).

6 Relevant to the materiality element, California’s Medical Marijuana Program Act
7 (“MMPA”) relieves certain qualified persons who associate “collectively or cooperatively
8 to cultivate marijuana for medical purposes” from certain state criminal sanctions relating
9 to marijuana. *See* Cal. Health & Safety Code § 11362.775(a). According to the
10 “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use”
11 issued by California’s Attorney General on August 25, 2008:

12 [A] properly organized and operated collective or cooperative
13 that dispenses medical marijuana through a storefront may be
14 lawful under California law, but . . . dispensaries that do not
15 substantially comply with the guidelines [covering collectives
16 and cooperatives] are likely operating outside the protections of
17 [the CUA] and the MMP[A], and . . . the individuals operating
18 such entities may be subject to arrest and criminal prosecution
19 under California law. For example, dispensaries that merely
require patients to complete a form summarily designating the
business owner as their primary caregiver—and then offering
marijuana in exchange for cash ‘donations’—are likely unlawful.

20 *Demoura v. Ford*, No. 09-CV-1344-OWW, 2010 WL 5426850, at *5 (E.D. Cal. Dec. 27,
21 2010) (quoting *People v. Hochanadel*, 176 Cal. App. 4th 997, 1009 (Ct. App. 2009)). Thus,
22 if a marijuana collective or cooperative is legally organized then “it and its operators might
23 have a defense to arrest and prosecution under section 11362.775.” *Hochanadel*, 176 Cal.
24 App. 4th at 1018. On the other hand, an entity that fails to comply with the guidelines
25 would likely be engaging in unlawful activity.

26 Here, Plaintiffs allege that “Defendants Clark and Stevens conspired to have
27 defendant Stevens willfully and intentionally deceive the issuing magistrate by falsely
28 swearing under oath that the marijuana was being cultivated illegally, despite the

1 knowledge of both defendants Clark and Stevens that the marijuana was being cultivated
2 legally.” (TAC ¶ 31.) Plaintiffs also allege that Defendants Clark and Stevens knew the
3 following facts: (1) Plaintiffs’ counsel was in contact with the deputies several months
4 before the raid and arrests in an endeavor to ensure compliance with all applicable state
5 laws, (*id.* ¶ 29); (2) Plaintiffs’ counsel provided copies of all valid recommendations to
6 Defendant Clark to allow him to confirm the validity of the recommendations, (*id.* ¶ 30);
7 (3) Defendant Clark twice visited Plaintiffs’ collective prior to September 2014, (*id.*); and
8 (4) Defendant Clark stated that the collective members were “golden” and the cultivation
9 operation was operating legally, (*id.*).

10 Defendants argue that Plaintiffs fail to demonstrate that their collective was in fact
11 legally operated. (MTD 13 (quoting “Prior Order,” ECF No. 39, at 13).) While Defendants
12 concede that the Third Amended Complaint includes new allegations regarding the
13 interactions between collective members and Defendant Clark, these allegations do not
14 establish that the collective was legal, “only that Plaintiffs believed it to be so and hoped
15 Defendant Clark would confirm the same.” (*Id.* (quoting Prior Order 10).) Defendants
16 also argue that Plaintiffs cannot establish materiality because “they fail to establish that the
17 information that was presented in the affidavit could not, by itself, support a probable cause
18 finding.” (*Id.* at 14.)

19 Plaintiffs counter that at this stage in the proceeding they only need to allege the
20 collective was operating legally rather than prove it was operating legally. (Opp’n 6.)
21 Plaintiffs argue that “[i]t was an outright lie for defendant Stevens to swear under oath that
22 criminal activity was taking place,” but in the very next sentence they admit that “only
23 defendants know what else was in the affidavit.” (*Id.*) Plaintiffs argue that they have no
24 burden to establish probable cause at the motion to dismiss stage; they need only allege
25 probable cause. (*Id.*)

26 This Court previously held that Plaintiffs’ “fail to allege that any statement was
27 material to the issuing of the warrant.” (Prior Order 13 (citing *Johnson*, 83 F. Supp. 3d at
28 926).) Alternatively, the Court also held that Plaintiffs failed to plausibly demonstrate that

1 “(1) Plaintiffs’ collective was, in fact, legally operated, and (2) Defendants Clark and
2 Stevens knew the same.” (*Id.*) The Court begins its analysis of the Third Amended
3 Complaint with these two holdings.

4 As before, the Court agrees with Defendants that Plaintiffs cannot establish
5 materiality because they fail to establish that the information presented in the affidavit
6 could not, by itself, support a probable cause finding. (MTD 14.) Plaintiffs’
7 counterargument is that only Defendants know what was in the affidavit beyond the
8 falsehood concerning the legality of the collective. (Opp’n 6.) This argument is not
9 credible. California law provides that “if [a search] warrant has been executed, the
10 documents and records shall be open to the public as a judicial record.” Cal. Penal Code
11 § 1534(a). Therefore, the search warrant documents would be available for Plaintiffs to
12 include in the Third Amended Complaint had they sought it out. Without the affidavit and
13 supporting material, the Court can only analyze the materiality element based on inference
14 from Plaintiffs’ factual allegations. The failure to include the search warrant and affidavit
15 is not fatal, but Plaintiffs need factual allegations to establish the judicial deception
16 elements.

17 Plaintiff’s factual allegations plausibly suggest that (1) there was a search warrant;
18 (2) there was a raid on the collective; and (3) at least one purpose of the raid was the
19 marijuana related activities of the collective. At the time of the raid, California law
20 provided some relief from criminal sanctions for marijuana collectives operating legally,
21 *see* Cal. Health & Safety Code § 11362.775(a); *Hochanadel*, 176 Cal. App. 4th at 1018,
22 thus, it is also plausible that a probable cause finding would need to address whether a
23 collective was operating legally or illegally. If that were the end of the matter, Plaintiffs
24 might have a plausible argument that Defendant Clark’s statement or omission in the
25 warrant affidavit was material to the probable cause supporting the search warrant.

26 However, as Defendants point out, Plaintiffs fail to address that the search warrant
27 could have issued regardless of the legality of the collective. Plaintiffs argue that they need
28 only *allege* the other information in the affidavit was not sufficient for probable cause.

1 (Opp’n 6 (emphasis added) (citing *Hervey v. Estes*, 65 F.3d 784, 787 (9th Cir. 1995)).)
2 Plaintiffs argue that the Court should not apply the summary judgment standard at this
3 stage in the proceedings. The Court agrees that Plaintiffs do not need to meet the summary
4 judgment standard for judicial deception. However, the authority Plaintiffs cite, *Hervey*,
5 65 F.3d 784, is pre-*Iqbal* and their Third Amended Complaint must meet the requirements
6 of *Iqbal*, see 556 U.S. at 677 (“[A] complaint must contain sufficient factual matter,
7 accepted as true, to ‘state a claim to relief that is plausible on its face.’” (quoting *Twombly*,
8 550 U.S. at 570)); see also *Lacey*, 693 F.3d at 935 (“As with [the plaintiff’s] other claims,
9 his allegations of conspiracy must satisfy *Iqbal*.”). The Third Amended Complaint lacks
10 sufficient facts to indicate the search warrant resulted from false affidavits. There is no
11 description of the affidavits’ contents. See *Rocha v. Cnty. of Tulare*, No. CV F 13-0796
12 LJO GSA, 2013 WL 4046373, at *9 (E.D. Cal. Aug. 8, 2013) (“[T]he FAC lacks sufficient
13 facts to indicate that the warrant arose from false affidavits. The FAC alleges conclusions
14 that the affidavits were false because [the plaintiff] legally possessed marijuana.”). The
15 Court does not have the benefit of any documents in making its determination—without
16 the warrant and the supporting affidavit (or factual allegations about the purportedly false
17 affidavit) it cannot determine whether the information presented in the affidavit, regardless
18 of the alleged falsehood, could by itself support a finding of probable cause.

19 The lack of materiality is sufficient grounds to grant Defendants’ motion. Moreover,
20 Plaintiffs have had several opportunities to amend their complaint and have repeatedly
21 failed to state a claim. Normally, such a conclusion could lead to a dismissal with
22 prejudice. See *Foman v. Davis*, 371 U.S. 178, 182 (1962) (“In the absence of any apparent
23 or declared reason—such as . . . repeated failure to cure deficiencies by amendments
24 previously allowed—the leave sought should, as the rules require, be ‘freely given.’”
25 (quoting Fed. R. Civ. P. 15(a)). However, in this instance the Court will detail why
26 Plaintiffs’ Third Amended Complaint, while still insufficient, will not be dismissed with
27 prejudiced.

28 The Court distinguishes its prior orders where it found that Plaintiffs failed to plead

1 sufficient factual allegations that Defendants Clark and Stevens knew that Plaintiffs'
2 collective was "legal." (Prior Order 10.) In their Third Amended Complaint, Plaintiffs
3 added a new allegation that Defendant Clark told them there were "golden" and they were
4 in compliance with state law. (TAC ¶ 30.) Defendants argue the new allegations do not
5 plausibly establish the collective was legal, only that Plaintiffs believed it to be so and
6 hoped Defendant Clark would confirm the same. Yet, the factual allegation, which the
7 Court must accept as true at this stage, plausibly suggests that Defendant Clark believed
8 the collective was legal. He allegedly said "that the collective members were 'golden' and
9 the cultivation operation [was] operating legally." (*Id.*) Unlike the prior interactions
10 alleged by Plaintiffs, which show (1) the intent of the collective to establish its legality and
11 (2) Plaintiffs' belief that they were operating legally, this statement is of a different nature.
12 This statement was made by Defendant Clark *to* the collective. Defendant Clark is no
13 longer passively receiving information from Plaintiffs; the new allegation is Defendant
14 Clark affirmatively making a statement to Plaintiff's counsel that Plaintiffs' were in
15 compliance with state law. Defendant Clark's statement to Plaintiffs' counsel would
16 plausibly lead them to believe that they had met all the requirements under California law
17 for a marijuana collective to be operating legally.

18 This allegation speaks to Defendant Clark's conduct, but the ultimate conclusion
19 from this allegation remains unclear. As stated previously, Plaintiffs do not plead sufficient
20 facts that Defendant Clark's statement or omission was material to finding probable cause
21 in the search warrant. Therefore, Plaintiffs do not plausibly state an underlying
22 constitutional violation, but further factual allegations could plausibly state a claim. *See*
23 *DeSoto*, 957 F.2d at 658.

24 ***B. Acting Under Color of State Law***

25 Plaintiffs allege that Defendants were acting under color of law. (*See* Opp'n 3–4.)
26 "There is no 'rigid formula' for determining whether a state or local law official is acting
27 under color of state law." *Anderson v. Warner*, 451 F.3d 1063, 1068 (9th Cir. 2006)
28 (quoting *Ouzts v. Md. Nat'l Ins. Co.*, 505 F.2d 547, 550 (9th Cir. 1974)). "State

1 employment is generally sufficient to render the defendant a state actor,” *West v. Atkins*,
2 487 U.S. 42, 48 (1988) (internal quotations and alterations omitted), but “whether a[n] . . .
3 officer is acting under color of state law turns on the nature and circumstances of the
4 officer’s conduct and the relationship of that conduct to the performance of his official
5 duties.” *Martinez v. Colon*, 54 F.3d 980, 986 (1st Cir. 1995).

6 The Ninth Circuit has emphasized there are “three critical requirements that must be
7 satisfied” to determine whether an individual is acting under color of state law:

8 First, the defendant’s action must have been “performed while
9 the officer is acting, purporting, or pretending to act in the
10 performance of his or her official duties.” *McDade v. West*, 223
11 F.3d 1135, 1140 (9th Cir. 2000). Second, the officer’s pretense
12 of acting in the performance of his duties must have had the
13 purpose and effect of influencing the behavior of others. *See Van*
14 *Ort v. Estate of Stanewich*, 92 F.3d 831, 839–40 (9th Cir. 1996)
15 (finding no color of state law because the victim had not opened
16 the door based on defendant’s status as a police officer). Third,
17 the challenged conduct must be “related in some meaningful way
18 either to the officer’s governmental status or to the performance
19 of his duties.” *Martinez*, 54 F.3d at 987.

20 *Anderson*, 451 F.3d at 1068–69.

21 Defendants argue that Plaintiffs fail to plead the alleged deprivations of their rights
22 occurred while Defendant Clark was acting under color of state law and also fail to plead
23 sufficient facts to support such a finding. (MTD 10.) Plaintiffs argue that there are
24 sufficient factual allegations support a finding that Defendants acted under color of state
25 law. They argue that “[p]rivate citizens cannot secure search warrants and arrest people.”
26 (Opp’n 4.)

27 Here, the Court considers the first two requirements together: (1) the defendant must
28 have acted, purported, or pretended to act in the performance of his official duties, (2) with
the purpose and effect of influencing the behavior of others. *See Anderson*, 451 F.3d at
1069. Plaintiffs allege that they contacted the San Diego County Sheriff’s Department to
inform them of their cultivation operation. (TAC ¶ 31.) Plaintiffs also allege that

1 Defendant Clark had several interactions with Plaintiffs and their counsel prior to the raid
2 that occurred. Defendant Clark received Plaintiffs' recommendations to determine the
3 legality of the collective and Clark visited the collective twice. (*Id.* ¶ 30.) These prior
4 activities are generally the sort a law enforcement officer would undertake. Therefore, the
5 Plaintiffs had reason to believe that further interactions with Defendant Clark would be in
6 the performance of his official duties. The raid occurred on September 12, 2014. Plaintiffs
7 allege virtually no facts beyond the briefest descriptions that (1) there was a raid; (2) a
8 warrant was involved; (3) members were arrested; and (4) marijuana plants were destroyed
9 or confiscated. (*Id.* ¶¶ 31–32.) However, those actions themselves are inherently coercive
10 and intended to influence others, namely to comply with the commands of a law
11 enforcement officer. Thus, when Defendant Clark and others executed the raid and
12 required Plaintiffs to surrender marijuana plants and arrested Sneller and Smith,
13 Defendants were acting, purporting, or pretending to act in performance of official duties
14 and had the purpose and effect of influencing the behavior of the members of the collective.

15 The third element requires that Defendant Clark's conduct must be sufficiently
16 related either to his governmental status or to the performance of his official duties. "This
17 requirement cannot mean that an officer must have been acting within the scope of his
18 authority in order for him to have been acting under color of state law. If that were true,
19 no § 1983 suit could ever succeed, for the premise of a successful suit is that the officer
20 acted illegally." *Anderson*, 451 F.3d at 1069. For example, in *Santiago v. Matkin*, No. 12-
21 CV-1883-H (JMA), 2014 WL 12059025, at *3 (S.D. Cal. May 12, 2014), the district court
22 found that defendants were acting under color of state law when they handcuffed and
23 arrested the plaintiffs, the defendants identified themselves as law enforcement officers,
24 and the defendants confiscated the plaintiffs' cell phones during the course of the
25 altercation.

26 Here, Plaintiffs allege that there was a search warrant and raid on September 12,
27 2014 resulting in arrests of Plaintiffs Sneller and Smith and confiscation of medical
28 marijuana plants. (TAC ¶¶ 31–32.) These actions—a search warrant, raid, arrest, and

1 confiscation of property—comport with “actions . . . of the kind that [defendant] was hired
2 to perform.” *Vasquez v. Cnty. of Los Angeles*, CV 11-3849 PSG (PJWx), 2012 WL
3 12930526, at *4 (C.D. Cal. Oct. 3, 2012) (citing *Huffman v. Cnty. of Los Angeles*, 147 F.3d
4 1054, 1059 (9th Cir. 1998)). The Court finds that Plaintiffs have alleged facts that plausibly
5 state Defendants were acting under color of state law. Yet, this finding only satisfies one
6 element of section 1983.

7 In light of the foregoing, the Court **GRANTS IN PART** Defendants’ Motion to
8 Dismiss. However, because Plaintiffs have alleged new factual allegations that could, with
9 further developed factual allegations, state a claim for relief, the Court **DISMISSES**
10 **WITHOUT PREJUDICE** Plaintiffs’ third cause of action.

11 **IV. Fourth and Sixth Causes of Action: False Arrest/Malicious Prosecution and**
12 **Conversion (State Law)**

13 In the fourth cause of action, Plaintiffs allege that “Defendants Clark and Stevens
14 falsely, intentionally and maliciously arrested Plaintiffs Smith and Sneller without
15 probable cause and despite the fact that defendants Clark and Stevens knew at all times
16 that . . . plaintiffs were engaged in legal conduct under the laws of the State of California.”
17 (TAC ¶ 50.) Plaintiffs alleges false arrest and malicious prosecution. In the sixth cause of
18 action, Plaintiffs allege that Defendants Clark and Stevens “illegally confiscated plaintiffs’
19 legally owned property” and bring a conversion claim. (*Id.* ¶ 60.) Both causes of action
20 sound in California law, not 42 U.S.C. § 1983.

21 Though not previously discussed in this Court’s prior orders or in either parties’
22 briefings, Plaintiffs’ state law claims implicate the California Tort Claims Act and its
23 presentation requirements. Generally, the Tort Claims Act provides that “[a] public entity
24 may . . . be sued,” but “no suit for money or damages may be brought against a public
25 entity . . . until a written claim therefor has been presented to the public entity and has been
26
27
28

1 acted upon by the board, or has been deemed to have been rejected by the board.”³ Cal.
2 Gov. Code §§ 945, 945.4. A claim relating to a cause of action for “injury to person or to
3 personal property or growing crops,” § 911.2, must be presented no later than six months
4 after the accrual of the cause of action and leave to file a claim after the six month deadline
5 must be sought within one year of the accrual of the action, § 911.4. “The purpose of the
6 claim procedure is said to be to give the public entity an opportunity for early investigation
7 and thus to settle just claims before suit, to defend unjust claims, and to correct conditions
8 or practices which gave rise to the claim.” *Briggs v. Lawrence*, 230 Cal. App. 3d 605, 612
9 (Ct. App. 1991) (citations omitted).

10 The presentation requirement extends to suits against public employees arising out
11 of an act or omission within the scope of the employee’s employment. *See* Cal. Gov. Code
12 § 950.2. The California Tort Claims Act has “what amounts to a requirement that . . . one
13 who sues a public employee on the basis of acts or omissions in the scope of the defendant’s
14 employment have filed a claim against the *public-entity employer* pursuant to the procedure
15 for claims against public entities.” *Briggs*, 230 Cal. App. 3d at 613 (citations omitted).
16 The presentation requirement includes suits brought against public employees sued in their
17 individual capacity. *See id.* (“[I]f an action against the public entity were barred because
18 a claim was not presented to the public entity . . . , the claimant could, nevertheless, bring
19 an action against the employee involved and recover a judgment which the public entity
20 ordinarily would then be required to pay’ without having had the opportunities for early
21 investigation, prompt settlement, adequate defense, and remedial action the claim
22 procedure was intended to provide.” (alterations in original) (citation omitted)).

23 A plaintiff must submit her claim to a public entity before bringing suit in court and
24 “submission of a claim to a public entity pursuant to section 900 et seq. ‘is a condition
25

26 ³ “There are exceptions to the government claim filing requirement. The filing requirement does not apply
27 to either non-pecuniary actions such as injunctive, specific, or declaratory relief, or causes of action based
28 upon federal law. *Canova v. Trs. of Imperial Irrigation Dist. Emp. Pension Plan*, 150 Cal. App. 4th 1487,
1493 (Ct. App. 2007). Here, Plaintiffs seek monetary damages only and they do not present any other
exception. (*See* TAC 18.)

precedent to a tort action and the failure to present the claim bars the action.”” *State v. Superior Court (Bodde)*, 32 Cal. 4th 1234, 1240 (2004) (quoting *Phillips v. Desert Hospital Dist.*, 49 Cal. 3d 699, 708 (1989)). “[F]ailure to allege facts demonstrating or excusing compliance with the requirement subject a complaint to general demurrer for failure to state a cause of action.” *Id.* at 1240–41 (citations omitted).

Here, Plaintiffs’ state law claims lie against Deputies Clark and Stevens, who they allege are Deputy Sheriffs of the San Diego County Sheriff’s Department. (*See* TAC ¶ 1.) Plaintiffs are suing Defendants Clark and Stevens for their activities when they “were acting as deputies of the San Diego County Sheriff’s Department.” (Opp’n 4.) Thus, Plaintiffs seek to hold Defendants Clark and Stevens liable for actions or omissions in the course of their employment. They seek only monetary damages. (*See* TAC 18.) Plaintiffs’ Third Amended Complaint contains no allegation that Plaintiffs have exhausted their state law remedies by timely filing a claim with the County of San Diego or similar entity as required by section 900 *et seq.*

Because this Order is the first instance in which the Court has addressed this issue, Plaintiffs may amend their complaint as to these two state law causes of action to demonstrate their compliance with California Government Code section 900 *et seq.* Accordingly, the Court **GRANTS IN PART** Defendants’ MTD and **DISMISSES WITHOUT PREJUDICE** Plaintiffs’ fourth and sixth causes of action.

V. Fifth Cause of Action: False Arrest/Malicious Prosecution Under Section 1983 Against Defendants Clark and Stevens

In the fifth cause of action, Plaintiffs allege that “Defendants Clark and Stevens falsely, intentionally and maliciously arrested plaintiffs Smith and Sneller without probable cause and recommended that false criminal charges be filed against them, despite the fact that defendants Clark and Stevens knew at all times that defendant Clark had been contacted by attorney Callaway and had assured attorney Callaway that plaintiffs were engaged in legal conduct under the laws of the State of California.” (TAC ¶ 55.) Plaintiffs further allege that these “illegal arrest[s] . . . violat[ed] . . . plaintiffs’ rights to due process

1 under the Fourth and Fourteenth Amendments.” (*Id.* ¶ 56). Unlike Plaintiffs’ fourth cause
2 of action, which pleads the same theory under state law, this cause of action relies on
3 section 1983.

4 ***A. False Arrest***

5 The Fourth Amendment requires that police officers have probable cause to support
6 an arrest. *Luchtel v. Hagemann*, 623 F.3d 975, 979 (9th Cir. 2010). An arrest is supported
7 by probable cause if, “under the totality of circumstances known to the arresting officers,
8 a prudent person would have concluded that there was a fair probability that [the suspect]
9 had committed a crime.” *Call v. Badgley*, 254 F. Supp. 3d 1051, 1066 (N.D. Cal. 2017)
10 (alteration in original) (quoting *Luchtel*, 623 F.3d at 979). “The evidence need support
11 ‘only the probability, and not a prima facie showing, of criminal activity’” *Franklin*
12 *v. Fox*, 312 F.3d 423, 438 (9th Cir. 2002) (quoting *Illinois v. Gates*, 462 U.S. 213, 235
13 (1983)).

14 Plaintiffs allege very few details surrounding the arrests of Plaintiffs Sneller and
15 Smith. For example, Plaintiffs allege that Defendants Clark and Stevens “falsely,
16 intentionally, and maliciously arrested plaintiffs Smith and Sneller without probable
17 cause . . . despite the fact that defendants . . . knew that plaintiffs were engaged in legal
18 conduct under the laws of the State of California.” (TAC ¶ 55.) There are no allegations
19 about the circumstances of the raid and arrest, what Plaintiffs were told when they were
20 arrested, or what charges were brought against Plaintiffs. Plaintiffs argue that such
21 allegations are sufficient because “plaintiffs are not required to prove anything at this state
22 [sic] of the proceedings” and Plaintiffs “were arrested by defendants Clark and Stevens
23 pursuant to an illegal warrant, improperly obtained by the two defendants via falsehood to
24 magistrate.” (Opp’n 7.)

25 Defendants argue that Plaintiffs’ cause of action is identical to the cause brought and
26 dismissed in Plaintiffs’ First Amended Complaint. (MTD 14.) They argue that because
27 Plaintiffs have failed to show that Defendants Clark and Stevens violated Plaintiffs’ civil
28 rights by illegally obtaining and executing the search warrant” then a derivative false arrest

1 claim must also fail. (*Id.* (citing ECF No. 31, at 13–14; ECF No. 39, at 15–16).)

2 The Court begins by noting that Plaintiffs’ factual allegations severely hamper
3 analysis of this claim. Plaintiffs do not state what criminal charge they received and the
4 Court can only infer based on the surrounding allegations. To begin, Plaintiffs allege there
5 was no probable cause because Defendants knew Plaintiffs were engaged in legal conduct
6 under the laws of the State of California. (*See* TAC ¶ 55.) Plaintiffs’ allegations would
7 allow the Court to reasonably infer that Plaintiffs Sneller and Smith were arrested for their
8 marijuana-related activities or some cognizable crime related to the activities of the
9 collective. However, neither the Compassionate Use Act (“CUA”) nor the MMPA supply
10 an absolute immunity from arrest.

11 In *People v. Mower*, the California Supreme Court held “section 11362.5(d) [of the
12 CUA] does not grant any immunity from arrest.” 28 Cal. 4th 457, 468–69 (2002). After
13 *Mower* was decided, the California Legislature enacted the MMPA to clarify the scope of
14 the CUA. *See People v. Kelly*, 47 Cal. 4th 1008, 1014 (2010). California courts have
15 recognized that the enactment of the MMPA did not modify the *Mower* holding, quoted
16 above. Thus, one California Court of Appeal has stated:

17 [T]he status of [a] qualified [marijuana] patient does not confer
18 an immunity from arrest. Law enforcement officers may arrest a
19 qualified patient for marijuana offenses where they have
20 probable cause, based on all of the surrounding facts including
21 qualified patient status when they have reason to believe, for
instance, that the arrestee does not possess marijuana for his
personal medical purposes.

22 *Littlefield v. Cnty. of Humboldt*, 218 Cal. App. 4th 243, 252 (Ct. App. 2013) (citing, e.g.,
23 *People v. Strasburg*, 148 Cal. App. 4th 1052, 1058 (Ct. App. 2007)). Thus, there may be
24 circumstances where a qualified marijuana patient possessing a legal recommendation
25 from a physician may still be subject to arrest.

26 The foregoing principles apply to the case at bar. The gravamen of Plaintiffs’
27 complaint is that the collective was operating legally and the raid, arrests, and confiscation
28 of marijuana plants all derive from the original sin of the ill-gotten search warrant.

1 According to Plaintiffs, the false arrest is derivative from Defendants knowing “at all times
2 that . . . plaintiffs were engaged in legal conduct.” (TAC ¶ 55.) For example, Plaintiffs
3 allege they all are “legal medical marijuana patients” (*see id.* ¶¶ 3–18), and that they
4 provided their recommendations to Defendant Clark, (*id.* ¶ 30). Even accepting as true
5 Plaintiff’s argument that they are qualified patients, “the status of [a] qualified patient does
6 not confer an immunity from arrest.” *Littlefield*, 218 Cal. App. 4th at 252. “The CUA
7 protects the possession of marijuana only in an amount reasonably related to the user’s
8 current medical needs.” *Id.* (citing *Kelly*, 47 Cal. 4th at 1043). Defendants may have had
9 probable cause to arrest Plaintiffs Sneller and Smith based on the totality of circumstances
10 at the time of the raid; beyond the allegedly ill-gotten search warrant and beyond
11 Defendants’ alleged knowledge the collective was operating legally. The Court simply
12 cannot assess Plaintiffs’ false arrest claim due to lack of factual allegations about the events
13 and circumstances of the arrest. Therefore, the Court finds that Plaintiffs fail to state a
14 claim for relief as to false arrest.

15 ***B. Malicious Prosecution***

16 “In order to prevail on a § 1983 claim of malicious prosecution, a plaintiff must show
17 that the defendants prosecuted him with malice and without probable cause, and that they
18 did so for the purpose of denying him equal protection or another specific constitutional
19 right.” *Flournoy v. Sacramento Cnty. Sheriff Dep’t*, No. 11-cv-2844-KJM-EFB P, 2017
20 WL 4237868, at *28 (E.D. Cal. Sept. 25, 2017) (quoting *Awabdy v. City of Adelanto*, 368
21 F.3d 1062, 1066 (9th Cir. 2004) (alteration and citation omitted)).

22 “Ordinarily, the decision to file a criminal complaint is presumed to result from an
23 independent determination on the part of the prosecutor, and thus, precludes liability for
24 those who participated in the investigation or filed a report that resulted in the initiation of
25 proceedings.” *Awabdy*, 368 F.3d at 1067 (citation omitted). “However, the presumption
26 of prosecutorial independence does not bar a subsequent § 1983 claim against state or local
27 officials who improperly exerted pressure on the prosecutor, knowingly provided
28 misinformation to him, concealed exculpatory evidence, or otherwise engaged in wrongful

1 or bad faith conduct that was actively instrumental in causing the initiation of legal
2 proceedings.” *Id.* (citations omitted).

3 Here, Plaintiffs allege only that “[c]riminal charges were rejected.” (TAC ¶ 55.)
4 There are no additional factual allegations about the criminal charges; there is nothing
5 about the circumstances of the prosecution, at what stage in the proceedings the criminal
6 charges were rejected, or even what charges Sneller and Smith received. Plaintiffs’
7 allegation is vague and in no way explains any interaction between the prosecutor and any
8 defendant(s) who improperly exerted pressure on the prosecutor. In prior orders, the Court
9 admonished Plaintiffs to provide factual allegations sufficient to state a claim for relief that
10 is plausible on its face. Plaintiffs have repeatedly failed to amend their complaint with
11 sufficient factual allegations. However, the Court concluded above that Plaintiffs’ judicial
12 deception claim may be viable, with proper amendment, *see supra* section III.A, and
13 Plaintiffs false arrest and malicious prosecution claims are derivative of the judicial
14 deception claim. Thus, the dismissal of this cause of action will be without prejudice.

15 Consequently, the Court **GRANTS IN PART** Defendants’ Motion to Dismiss and
16 **DISMISSES WITHOUT PREJUDICE** Plaintiffs’ sixth cause of action.

17 **VI. Seventh Cause of Action: Violation of Rights Under California Civil Code**
18 **Section 52.1 Against Defendants Clark and Stevens (State Law Claim)**

19 Plaintiffs allege that Defendants

20 owed a duty to plaintiffs to not violate their rights under
21 California Civil Code Section 52.1. Defendants breached their
22 duty owed to plaintiffs by, inter alia, conspiring to lie to and
23 mislead the issuing magistrate, by illegally destroying plaintiffs’
24 property, illegally arresting plaintiffs Sneller and Smith and
illegally recommending that false felony charges be brought
against plaintiffs Sneller and Smith.

25 (TAC ¶ 63.) Plaintiffs additionally allege “[a]s a proximate result of defendants’ conduct[,]
26 plaintiffs’ rights under the laws and Constitution of the State of California were violated
27 and plaintiffs damaged thereby.” (*Id.* ¶ 64.)

28 California Civil Code Section 52.1 (“Bane Act”) “authorizes an action at law, a suit

1 in equity, or both, against anyone who interferes, or tries to do so, by threats, intimidation,
2 or coercion, with an individual’s exercise or enjoyment of rights secured by federal or state
3 law.” *Jones v. Kmart Corp.*, 17 Cal. 4th 329, 331 (1998). “The word ‘interferes’ as used
4 in [Section 52.1] means ‘violates.’” *Austin B. v. Escondido Union Sch. Dist.*, 149 Cal. App.
5 4th 860, 883 (2007). “The essence” of a Section 52.1 claim is that the defendant, “by the
6 *specified* improper means (i.e., ‘threats, intimidation or coercion’), tried to or did prevent
7 the plaintiff from doing something he or she had the *right* to do under the law or to force
8 the plaintiff to do something that he or she was not required to do under the law.” *Id.*
9 (emphasis added).

10 In order to recover for a Bane Act violation, Plaintiffs must show that (1) Defendants
11 interfered with their constitutional or statutory rights; and (2) that the interference was
12 accompanied by actual or attempted threats, intimidation, or coercion. *Lawman v. City and*
13 *Cnty. of San Francisco*, 159 F. Supp. 3d 1130, 1151 (N.D. Cal. 2016). Further, California
14 courts have made clear that “a plaintiff in a search-and-seizure case must allege threats or
15 coercion *beyond* the coercion inherent in a detention or search in order to recover under the
16 Bane Act.” *Lyall v. City of Los Angeles*, 807 F.3d 1178, 1196 (9th Cir. 2015) (emphasis
17 added) (citing, e.g., *Allen v. City of Sacramento*, 234 Cal. App. 4th 41, 67 (Ct. App. 2015)
18 (“[A] wrongful arrest or detention, without more, does not satisfy both elements of [the
19 Bane Act].”) (alterations in original)); *see Bender v. Cnty. of Los Angeles*, 217 Cal. App.
20 4th 968, 978 (Ct. App. 2013) (“[T]he Bane Act applies because there was a Fourth
21 Amendment violation—an arrest without probable cause—*accompanied by* the beating
22 and pepper spraying of an unresisting plaintiff, i.e., coercion that is in no way inherent in
23 an arrest, either lawful or unlawful.” (emphasis added)).

24 Here, Plaintiffs’ Bane Act claim stems from the illegal search warrant and the
25 resulting, derivative conduct. Assuming, arguendo, Plaintiffs had lawful possession of the
26 marijuana, they fail to plead sufficient facts to support a plausible claim that Defendants
27 conduct went beyond the coercion inherent in a detention or search. *See id.* Plaintiffs’
28 Bane Act claims are based entirely on an unconstitutional search, arrest, and, confiscation

1 of potential contraband, and prosecution—they allege no further conduct that goes beyond
2 these acts. *See Allen v. Cnty. of Lake*, No. 14-cv-03934-THE, 2017 WL 363209, at *4
3 (N.D. Cal. Jan. 25, 2017) (“[B]ecause Plaintiffs base their Bane Act claims entirely on the
4 unconstitutional search and seizure violations they have failed to provide evidence of
5 independent threats, intimidation, or coercion that give rise to a Bane Act claim against
6 any Defendant.” (citation omitted)). The lack of factual allegations concerning threats,
7 intimidation, or coercion—beyond the coercion inherent in search, seizure, and
8 detention—means that Plaintiffs’ Bane Act claim must fail.

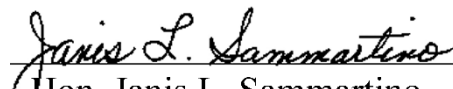
9 Therefore, the Court **GRANTS** Defendants’ MTD and **DISMISSES WITHOUT**
10 **PREJUDICE** Plaintiffs’ seventh cause of action.

11 CONCLUSION

12 In light of the above, the Court **GRANTS** Defendants’ Motion to Dismiss. (ECF
13 No. 40.) The Court has repeatedly admonished Plaintiffs’ to adequately re-plead their
14 causes of action with sufficient factual allegation to state a claim for relief. Plaintiffs have
15 had three opportunities to do so and each iteration yield the bare minimum of additional
16 factual allegations. However, because Plaintiffs amended their TAC to include factual
17 allegations that could, with additional detail, state a claim for relief, *see supra* section III.A,
18 the Court **DISMISSES WITHOUT PREJUDICE** Plaintiffs’ Third Amended Complaint.
19 Plaintiffs **SHALL FILE** an amended complaint, if any, on or before twenty-one (21) days
20 from the date on which this Order is electronically docketed. *Failure to file an amended*
21 *complaint on this date may result in a dismissal of this case with prejudice.*

22 **IT IS SO ORDERED.**

23 Dated: March 5, 2018

24 
25 Hon. Janis L. Sammartino
26 United States District Judge
27
28